

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

AMADO BETANCOURT REYES,

Defendant.

No. 2:96-cr-0407 KJM

ORDER

Defendant Amado Betancourt Reyes, proceeding pro se¹, has filed a motion to reduce his sentence pursuant to 18 U.S.C. § 3582(c)(2), ECF No. 175. Defendant relies on Amendment 782 to U.S.S.G. § 1B1.10, which lowered by two points the base offense level for most drug trafficking offenses. The Amendment applies retroactively to defendants sentenced prior to its effective date. *See Serrano v. U.S.*, 2014 WL 6773237 (E.D. Cal. 2014), slip op. at 1. Although directed to do so, *see* ECF No. 60, the government has not filed a response to defendant's motion. After consideration of the moving papers and the arguments, of counsel, the court hereby grants defendant's motion.

On November 5, 1997, defendant was convicted by a jury on charges of conspiracy to distribute and possess with intent to distribute methamphetamine (Count 1) and possession with

¹ On March 19, 2015, the Office of the Federal Defender filed notice that it did not recommend appointment of counsel to represent defendant on the instant motion. *See* ECF No. 176.

1 intent to distribute methamphetamine (Count 2), in violation of 21 U.S.C. §§ 841(a)(1) and 846.
2 *See* Presentence Investigation Report (PSR) at 1.² On April 9, 1998, he was sentenced to 292
3 months in prison on Count 1 and a concurrent term of 292 months on Count 2. ECF No. 79.

4 The authority of the district courts to modify a prison sentence is governed by 18 U.S.C.
5 § 3582, which provides in relevant part:

6 (2) in the case of a defendant who has been sentenced to a term of
7 imprisonment based on a sentencing range that has subsequently
8 been lowered by the Sentencing Commission pursuant to 28 U.S.C.
9 994(o), upon motion of the defendant . . . , the court may reduce the
10 term of imprisonment, after considering the factors set forth in
section 3553(a) to the extent they are applicable, if such a reduction
is consistent with applicable policy statements issued by the
Sentencing Commission.

11 18 U.S.C. § 3582(c).

12 As the Ninth Circuit recognizes, “[t]he Supreme Court has clarified that section
13 3582(c)(2) requires a two-step inquiry.” *United States v. Dunn*, 728 F.3d 1151, 1155 (9th Cir.
14 2013) (citing *Dillon v. United States*, 560 U.S. 817, 827 (2010)). “First, a district court must
15 determine whether a prisoner is eligible for a sentence modification under the Commission’s
16 policy statement in U.S.S.G §1B1.10.” *Id.* (citing *Dillon*, 560 U.S. at 827). This is done “by
17 “determin[ing] the amended guideline range that would have been applicable to the defendant”
18 had the relevant amendment been in effect at the time of the initial sentencing.” *Dillon*, 130 S.Ct.
19 at 2691 (quoting §1B1.10(b)(1)).” *Dunn*, 1155 n.3. Generally, §1B1.10 precludes reduction of a
20 term of imprisonment below the minimum of the amended guideline range. *Id.* However,
21 U.S.S.G. §1B1.10(b)(2)(B) authorizes a reduction below the amended guideline range for a
22 defendant whose original sentence was below the then-applicable guideline range based on
23 substantial assistance to the government.³

24 ² A copy of the January 13, 1998 PSR is filed under seal as required by this order.

25 ³ U.S. Sentencing Guidelines Manual § 1B1.10((b)(2)(B) (2014) provides:

26 (B) Exception for Substantial Assistance.—If the term of
27 imprisonment imposed was less than the term of imprisonment
28 provided by the guideline range applicable to the defendant at the
time of sentencing pursuant to a government motion to reflect the

1 Here, defendant's commitment offense involved 517.44 grams of actual
2 methamphetamine. PSR ¶ 3. At the time of defendant's sentencing, the sentencing guidelines
3 provided a base offense level of 34 for that amount of methamphetamine. PSR ¶ 15; U.S.S.G.
4 §2D1.1(c)(3)(1997).⁴ Defendant received a two-level increase for obstruction of justice, making
5 his total offense level 36. PSR ¶¶ 18-21. His criminal history category was V, PSR ¶ 31, making
6 his sentencing guideline range 292 to 365 months in prison. PSR ¶ 45. As noted above, the court
7 sentenced defendant to 292 months in prison on Count 1 and a concurrent 292 month term on
8 Count 2.

9 Amendment 782 did not change the base offense level for 517.44 grams of actual
10 methamphetamine, which remains at 34. U.S.S.G. §2D1.1(c)(4)(2014). Thus, the amendment
11 does not authorize a reduction in defendant's sentence.

12 For all of the foregoing reasons, IT IS HEREBY ORDERED that:

13 1. Defendant Amado Betancourt Reyes' motion to reduce sentence, ECF No. 175, is
14 denied; and

15 2. The Clerk of the Court is directed to file the January 13, 1998 Presentence
16 Investigation Report for defendant under seal.

17 DATED: November 12, 2015.

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UNITED STATES DISTRICT JUDGE

defendant's substantial assistance to authorities, a reduction
comparably less than the amended guideline range determined
under subdivision (1) of this subsection may be appropriate.

⁴ The 1997 Guidelines Manual was used in the preparation of defendant's PSR. PSR § 13.